

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AT CINCINNATI**

TEDDY NICHOLS,	:	Case No. C-1-02-0045
	:	
Plaintiff,	:	Judge Sandra Beckwith
	:	Magistrate Judge Timothy Hogan
v.	:	
	:	
INDIANA MICHIGAN POWER COMPANY	:	
RIVER TRANSPORTATION DIVISION	:	
and/or AMERICAN ELECTRIC POWER	:	
FUEL SUPPLY, RIVER TRANSPORTATION	:	
DIVISION,	:	
	:	
Defendants.	:	

**DEFENDANTS' REPLY MEMORANDUM TO PLAINTIFF'S
RESPONSE TO DEFENDANTS' MOTION FOR ADVISORY JURY**

Defendants, Indiana Michigan Power Company River Transportation Division and American Electric Power Fuel Supply, River Transportation Division ("Defendants"), have moved this Court to empanel an advisory jury pursuant to Federal Rule of Civil Procedure 39(c). In response to Defendants' Motion, Plaintiff, Teddy Nichols ("Plaintiff"), asserts Defendants are attempting to deprive Plaintiff of his right to elect a jury or non-jury trial pursuant to the Jones Act. (Response Memorandum, p. 1).

The parties agree that there is no right to a jury trial in admiralty cases. Fed. R. Civ. P. 38(e). By including a Rule 9(h) designation in his Second Amended Complaint, Plaintiff chose to proceed with his claims in admiralty, without a jury. Plaintiff contends, however, that granting Defendants' request for an advisory jury would contravene his choice to litigate his claims to the Court as opposed to a jury. However, the use of advisory juries is not inconsistent with admiralty law and does not offend the right of the Plaintiff to proceed without a jury.

A court sitting in admiralty retains complete freedom to adopt in whole or in part or totally disregard the findings of an advisory jury. *American River Transp. Co. v. Paragon Marine Services, Inc.*, 213 F. Supp. 2d 1035, 1054 (E.D. Mo. 2002); *In re Incident Aboard D/B Ocean King*, 758 F.2d 1063, 1071 (5th Cir. 1985). The ultimate responsibility for finding the facts remains with the court. *Wilson v. Prasse*, 463 F.2d 109, 116 (3rd Cir. 1972); *Frostie Co. v. Dr. Pepper Co.*, 361 F.2d 124, 126 (5th Cir. 1966). The use of a jury in an advisory capacity does not deprive Plaintiff of a trial to the bench, because the jury acts merely as an aid to the Court and the judge bears the ultimate responsibility for findings. Thus, empaneling an advisory jury is not inconsistent with non-jury disposition of admiralty cases.

For each of the foregoing reasons, Defendants' respectfully request the Court **GRANT** their Motion for Advisory Jury.

Respectfully requested,

s/ Megan C. Ahrens

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was sent by electronic filing and/or regular U.S. Mail to the following this 13th day of May, 2004.

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s/ Megan C. Ahrens

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